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6
7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON
9 AT SPOKANE
10

11 PLUMBERS UNION LOCAL NO. 12
12 PENSION FUND, Individually and on
13 Behalf of All Others Similarly Situated,

14 Plaintiff,

15 vs.

16 AMBASSADORS GROUP INC., et al.,

17 Defendants.

No. CV-09-00214-JLQ

CLASS ACTION

LEAD PLAINTIFF PLUMBERS
UNION LOCAL NO. 12 PENSION
FUND'S OPPOSITION TO
DEFENDANTS AMBASSADOR
GROUP INC., JEFFREY D. THOMAS
AND MARGARET M. THOMAS'
REQUEST FOR JUDICIAL NOTICE

ORAL ARGUMENT REQUESTED

DATE: May 20, 2010

TIME: 1:30 p.m.

COURTROOM: The Honorable
Justin L. Quackenbush

1 Defendants Ambassadors Group Inc. (“Ambassadors” or the “Company”),
 2 Jeffrey D. Thomas and Margaret M. Thomas ask this Court to take judicial notice of
 3 certain documents in support of defendants’ motion to dismiss plaintiff’s First
 4 Amended Complaint for Violations of Federal Securities Laws. Dkt. No. 45.
 5 Defendants request judicial notice of: (1) certain transcripts of conference calls
 6 conducted by Ambassadors; (2) certain U.S. Securities and Exchange Commission
 7 (“SEC”) Forms 3 and 4 reporting stock transactions by named individuals; (3)
 8 additional SEC filings made by Ambassadors, including certain Forms 8-K, 10-K, and
 9 14A; and (4) an excerpt of legislative history.

10 Lead plaintiff Plumbers Union Local No. 12 Pension Fund does not object to
 11 judicial notice of these documents for the limited purpose of establishing the content
 12 of the documents.

13 Plaintiff does object to the request to the extent defendants seek to establish or
 14 have the Court assume the truth of the matters asserted in such documents. Under the
 15 Federal Rules of Civil Procedure, “a district court may not consider any material
 16 beyond the pleadings in ruling on a Rule 12(b)(6) motion.” *Lee v. City of Los*
 17 *Angeles*, 250 F.3d 688, 688 (9th Cir. 2001) (quoting *Branch v. Tunnell*, 14 F.3d 449,
 18 453 (9th Cir. 1994)). Although a court may consider materials that are attached to or
 19 cited in the complaint, or certain undisputed matters of public record, such notice is
 20 limited to the contents of the documents and does not allow a court to assume the truth
 21 of the matters asserted. *Lee*, 250 F.3d at 688.

22 In *Lee*, the Ninth Circuit noted that the lower court had improperly “assumed
 23 the existence of facts that favor defendants based on evidence outside plaintiffs’
 24 pleadings, [and] took judicial notice of the truth of disputed factual matters.” *Id.* The
 25 Ninth Circuit explained that “when a court takes judicial notice of another court’s
 26 opinion, it may do so ‘not for the truth of the facts recited therein, but for the existence

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 PENSION FUND’S OPPOSITION TO DFTS
 AMBASSADOR GROUP INC., J. D. THOMAS
 AND M. M. THOMAS’ REQ FOR JUDICIAL
 NOTICE (CV-09-00214-JLQ)

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1 of the opinion” *Id.* at 690 (citation omitted). *See also Klein v. Freedom*
 2 *Strategic Partners, LLC*, 595 F. Supp. 2d 1152, 1157 (D. Nev. 2009) (when taking
 3 notice of a public record, the court ““may do so not for the truth of the facts recited
 4 therein, but for the existence of the [record], which is not subject to reasonable dispute
 5 over its authenticity””) (alteration in original and citation omitted).

6 Ambassadors’ motion to dismiss is replete, however, with disputed factual
 7 assertions which are improper in the context of a motion to dismiss. For example,
 8 defendants make the factual assertion that the “underperformance came as a surprise
 9 to the Company because it had tested the mailing list in prior years using reliable
 10 testing methods that had proved successful in the past.” Ambassadors’ Mem. at 1:19-
 11 21.¹ Similar factual assertions are made in Ambassadors’ Memorandum at 8:8-16,
 12 26:13-27:9.

13 All of these matters are disputed factual assertions based on defendants’ own
 14 say-so. There is simply no evidence before this Court that Ambassadors was surprised,
 15 that the testing methods were reliable or that they had been successful in the past, nor
 16 would it even be proper for the Court to consider such evidence on a pleading motion.
 17 The fact that defendants may have made such claims during the conference calls does
 18 not turn the self-serving assertions either into evidence or into factual assertions
 19 subject to judicial notice.

22 ¹ “Ambassadors’ Mem.” or “Memorandum” refer to Defendants Ambassadors
 23 Group Inc., Jeffrey D. Thomas and Margaret M. Thomas’ Memorandum in Support of
 24 Motion to Dismiss First Amended Complaint for Violations of Federal Securities
 25 Laws. Dkt. No. 51.
 26

Defendants similarly insist that Ambassadors “relies on names lists from many different sources to identify potential program participants for initial invitations.” *Id.* at 5:13-14. “The Company utilizes dozens of different sources for names across all product lines.” *Id.* at 7:22-28:1. No evidence supports these assertions, regardless of whether defendants made that claim during the class period and repeat it now. In fact, the president of People to People International, the entity that sponsors Ambassadors’ trips has admitted that Ambassadors gets its names from three sources:

Eisenhower says the names of potential student ambassadors are generated from three sources:

- A mailing list compiled by the American Student List company;
- Nominations from parents and teachers; and
- Nominations from individuals who’ve traveled with the organization.

Declaration of John K. Grant in Support of Lead Plaintiff Plumbers Union Local No. 12 Pension Fund’s Opposition to Defendants Ambassadors Group Inc., Jeffrey D. Thomas and Margaret M. Thomas’ Motion to Dismiss First Amended Complaint for Violations of Federal Securities Laws (concurrently filed herewith), Exhibit A.² CW1, moreover, told plaintiff that 90% of the names come from a mailing list. ¶37.

Defendants make similar assertions concerning the economy (Ambassadors’ Mem. at 1:15-21, 29:6-10), regarding at what point in the year defendants might have known a problem existed (*id.* at 28:5-7), and claiming that Ambassadors’ disclosure was “prompt and candid.” *Id.* at 29:11. Here again, all of these factual assertions are

² See also Exhibit B to the Declaration of John K. Grant (“We learned the Ambassador Group buys the names of prospective students from a national list service – the American Student List.”).

1 outside the complaint, are subject to dispute and should be disregarded by this Court
2 until after plaintiff has had the opportunity for discovery and they are properly
3 asserted either at summary judgment or at trial.

4 Lead plaintiff respectfully objects to defendants' request for judicial notice to
5 the extent they rely on the cited documents to establish the truth of the matters
6 asserted.

7 DATED: March 11, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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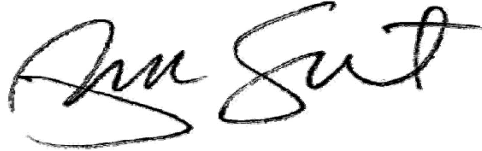
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1 I certify under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct. Executed on March 11, 2010.

3
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